

STATE OF MICHIGAN
COURT OF APPEALS

KEITH BURCH,

Plaintiff-Appellant,

v

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Defendant-Appellee.

UNPUBLISHED

May 22, 2007

No. 274496

Wayne Circuit Court

LC No. 06-622015-CH

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition and dismissing the case with prejudice. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In December 2002, plaintiff entered into a mortgage agreement with mortgagee ABN AMRO Mortgage Group, Inc. (ABN AMRO) concerning real estate at 17567 Prairie St. In 2005, ABN AMRO initiated foreclosure proceedings that led to defendant's purchase of the real estate at a mortgage sale on July 27, 2005.

On August 2, 2006, plaintiff filed his complaint requesting that the mortgage foreclosure be set aside because of an alleged assignment of the mortgage to defendant prior to the foreclosure, because of improper notice of default and initiation of the foreclosure proceedings, and because defendant's obligation to ABN AMRO had been discharged.

Defendant filed a motion for summary disposition. At the hearing on the motion for summary disposition, plaintiff argued that the mortgage was paid off, and produced as evidence plaintiff's affidavit, plaintiff's credit report, and a check from ABN AMRO issued to plaintiff on April 27, 2005. Plaintiff also introduced as evidence a letter which plaintiff argued showed there was an assignment of the mortgage from ABN AMRO to defendant and such assignment was handled improperly.

Defendant countered that there was never an assignment, and the Letter submitted by plaintiff did not suggest an assignment. Rather, the Letter stated: "[t]he investor of Mr. Burch's loan is Federal Home Loan Mortgage Corporation. The contract between ABN AMRO Mortgage Group, Inc. and Federal Home Loan Mortgage Corporation does not affect the terms

of your mortgage contract.” Defendant also argued that plaintiff’s affidavit was not notarized and the evidence presented by plaintiff did not suggest that he had paid off the mortgage.

The trial court dismissed the case, finding that there was no assignment and that plaintiff’s evidence did not support his allegations.

A trial court’s decision on a motion for summary disposition is reviewed de novo. *Mitchell Corp of Owosso v Dep’t of Consumer & Industry Services*, 263 Mich App 270, 274; 687 NW2d 875 (2004). When a trial court considers facts outside the pleadings to make its determination on a motion for summary disposition, we treat the dismissal of plaintiff’s claim as having been based on MCR 2.116(C)(10). *Id.* at 275.

When reviewing a motion for summary disposition based on MCR 2.116(C)(10), this Court

considers all the evidence, affidavits, pleadings, admissions, and other information available in the record in the light most favorable to the nonmoving party. The nonmoving party must present more than mere allegations in order to demonstrate a genuine issue of material fact for resolution at trial. Summary disposition is properly granted if no factual dispute exists, thereby entitling the moving party to judgment as a matter of law. [*Randolph v Reisig*, 272 Mich App 331, 333; 727 NW2d 388 (2006) (citations omitted).]

MCR 2.119(B) outlines the form that an affidavit is to take if it is filed in opposition to a motion. Plaintiff’s affidavit was not a properly sworn statement because it was not notarized, and therefore it did not affirmatively show that plaintiff, if sworn as a witness, could testify competently to the facts stated in the affidavit. MCR 2.119(B)(1)(c); *Tate v Botsford Gen Hosp*, 472 Mich 904; 696 NW2d 684 (2005). Because it was not notarized, plaintiff’s affidavit is not proper to oppose defendant’s motion for summary disposition. Further, the Sheriff’s Deed states that the deputy sheriff in Wayne County duly posted notice in a conspicuous place on the premises affected by the mortgage.

The remaining documentary evidence submitted by plaintiff did not contain support for plaintiff’s allegations. The Letter submitted by plaintiff did not establish that an assignment took place between the original mortgagee and defendant. Rather, the Letter stated that defendant was an investor, and its relationship with ABN AMRO did not affect the terms of plaintiff’s mortgage contract.

The credit report page submitted by plaintiff was issued on February 8, 2006, which was after the July 27, 2005 Sheriff’s sale. The credit report page shows that a foreclosure was initiated, and the account was paid and closed in August 2005. Payment in August 2005 is consistent with defendant’s Sheriff’s sale purchase of the property in July 2005. Further, such information showing that the payoff occurred in August is inconsistent with plaintiff’s claim that he paid off the property before ABN AMRO sent the April 27, 2005 refund check to him.

Rather, the April 27, 2005 check with the memo “funds disbursed from suspense account” is consistent with funds being sent to plaintiff due to the initiation of foreclosure proceedings, rather than due to prior payment in full of the account.

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff